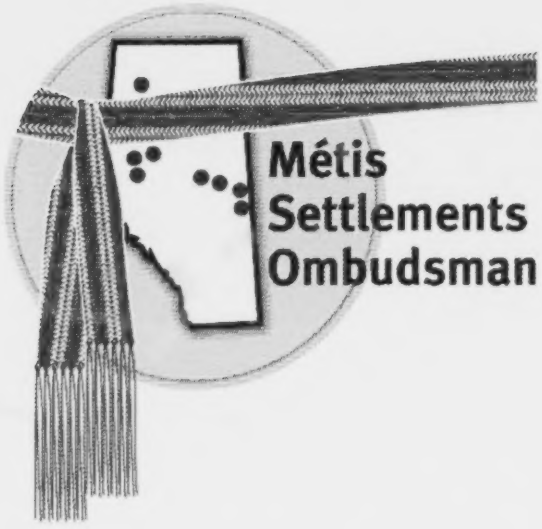


# Annual Report

**For the period April 1, 2006 to March 31, 2007**

April 2007

The Honourable Guy Boutilier
Minister of International, Intergovernmental and
Aboriginal Relations
423 Legislature Building
10800 - 97 Avenue
Edmonton, Alberta
T5K 2B6

Dear Honourable Minister:

I am honoured and pleased to present to you the fourth Annual Report of the activities of the Office of the Métis Settlements Ombudsman.

This report is submitted to you pursuant to *Schedule 1* of the *Agreement* effective April 1, 2003; it covers the activities of the Office of the Métis Settlements Ombudsman for the period April 1, 2006, to March 31, 2007.

Original Signed by:
Harley Johnson
Alberta Métis Settlements Ombudsman

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# Message from Harley Johnson, Alberta Métis Settlements Ombudsman

This past year has been filled with both significant accomplishments in performing the role assigned to me and the Office of the Métis Settlements Ombudsman as well as some very real frustrations.

In my last year's Annual Report I mentioned that Settlement Councillors and staff have contacted my Advisors asking questions as to the correct way to accomplish objectives without placing themselves in a *conflict* or perceived *conflict of interest* position. I am pleased to learn that this past year the numbers have in fact increased. While it takes time and effort to provide the appropriate advice and information, it is something I firmly believe in. A *proactive* approach can save time and effort on everyone's part, not to mention embarrassment.

Last year, the Annual Report contained summaries involving a *cooperative forensic review* being conducted on one Settlement. This review was being done at the request of the Council of the day. A number of issues were resolved. Some, however, remained outstanding and identified evidence of behaviour which contravened both Criminal Law and the *Métis Settlements Act*. Neither I, nor my staff, have any jurisdiction over Criminal matters, and this evidence was turned over to the Royal Canadian Mounted Police about one and a half years ago. I am still waiting for the results of their involvement.

Evidence of a theft of public monies involving a different Settlement was also turned over to the Royal Canadian Mounted Police and they have decided not to proceed with a prosecution.

Evidence of a violation of the *Métis Settlements Act* was presented to a Councillor who had a debt to the Settlement *and* a Settlement entity. The Councillor did not have a *repayment agreement* with the Settlement but did have a *repayment agreement* in place with the Settlement entity; however, the Councillor was not in compliance with that agreement. The Councillor was informed of the duty to resign under the *Métis Settlements Act* but refused to do so. This issue was submitted to the then Minister of Aboriginal Affairs and Northern Development recommending the Councillor be dismissed, and this process is still in progress.

The *cooperative forensic review*, however, was stopped by the newly elected Council and they have refused any further cooperation with me or members of my staff. While I understand some of the

arguments (both legal and political) for doing so, the objective of providing a mechanism for Settlement members to voice their concerns, or to grieve decisions where members feel they have been treated unfairly, has been removed or blocked from the affected Settlement members. This resistance, regardless of the final outcome of a challenge, compromises transparency and timely administrative fairness. Appropriate steps are being taken by the Provincial Government through the Minister of International, Intergovernmental and Aboriginal Relations to remove the roadblocks and impediments, but this takes time. It is true that the powers of the *Public Inquiries Act* could be invoked but a more legislated mandate supporting the Office and the Métis Settlements Ombudsman is sorely needed and hopefully will be in place by the time this Report is made public. Once this mandate is in place, through the passage of Regulations, the backlog of complaints from this particular Settlement can be addressed.

As identified in last year's Annual Report, it is an ongoing practice within our office to review how we do our jobs, if our administrative practices are working, and what areas require change to operate more effectively and efficiently. This year we have had to deal with many of the complaints reviewed under the auspices of an "Ombudsman's Own Initiative." The Ombudsman's Own Initiative was established for two primary reasons. One is because, during the course of our regular reviews, our Advisors identify systemic problems that are bigger than the scope of the initial complaint. The other reason is that one or more members call with a similar complaint but, due to fear of repercussion (i.e. fear of physical/verbal assault or fear of losing their jobs or services), they request their identity be kept confidential. At year's end, there were 85 different areas of concern being looked into or completed under the Ombudsman's Own Initiative – some of which can be read in the Ombudsman's Own Initiative Summaries.

As part of one of the areas of concern being looked into under the Ombudsman's Own Initiative, Howard Kushner (former Ombudsman for British Columbia) was appointed to conduct an Investigation pursuant to Section 235 of the *Métis Settlements Act*, S.A. c. M-14. He was requested to investigate:

1. *The validity of the process utilized by a Settlement Council in overturning the Administrator's decision not to provide salary advances; and*
2. *The appropriateness of Councillors of the Settlement seeking and obtaining public funds for what appears to be personal benefit and use.*

Mr. Kushner made 13 recommendations to the Settlement Council, including one to adopt recommendations previously made by the Office of the Métis Settlements Ombudsman, and reported that, should questionable financial transactions continue to occur and Council members continue to receive inappropriate financial benefits which are contrary to policy, then more serious action may need to be taken by the Office of the Métis Settlements Ombudsman.

Even with the frustrations and roadblocks, many issues were resolved with specific recommendations made to, and accepted by, different Councils and entities. These situations become a win-win-win situation ~~ a win for fair treatment, a win for the complainant and a win for transparent governance.

I would like to extend my personal thanks and best wishes to the Honourable Pearl Calahasen, former Minister of Aboriginal Affairs and Northern Development. Without her fortitude and direct support, this Office would never have been implemented. I am also impressed with the new Minister of International, Intergovernmental and Aboriginal Relations. Mr. Boutilier has shown he is strong, direct and truly seeking to support appropriate governance mechanisms within Alberta's Métis Settlements.

I have the very good fortune to have committed co-workers within my Office. I look forward to continuing the mentoring process with the incoming Métis Settlements Ombudsman, Mr. Gary Jones, to installing the new Senior Advisor, Mr. Chuck Moberly-McBurney, as well as to working with Advisor, Danielle Cardinal. Our Office Administrator, Terri Dorfman, part-time Administrative Support, Carolyn Woudstra, and Auditor, Marion Truax, continue to provide an excellent support structure for the efficiency of the operations of the Office of the Métis Settlements Ombudsman.

My role was to establish an Office of the Métis Settlements Ombudsman, to develop policies, protocols and procedures in providing Ombudsman services to Settlement Councils, entities and members and to mentor my successor. With the anticipated establishment of the Regulations pursuant to the *Métis Settlements Act*, my objectives have been reached and my role completed. I now leave the Office of the Métis Settlements Ombudsman, confident that the Office and the people in place are more than capable to continue working with all Settlement members in furthering the attainment of self-governance by Métis Settlements while preserving and enhancing Métis culture and identity. In addition, I wish to pass on to all Settlement members my gratitude because my own life has been significantly enriched by you as a community and as individuals.

God bless

Original Sign by:
Harley Johnson

## Message from Gary Jones, Deputy Métis Settlements Ombudsman

Tansi,

I was honoured when the former Minister for Aboriginal Affairs and Northern Development accepted the recommendation of the Selection Panel for the Métis Settlements Ombudsman and appointed me as the Deputy Métis Settlements Ombudsman. My formal mentoring period under Harley Johnson commenced on December 11, 2006; soon it will be over, and I will become the new Métis Settlements Ombudsman. It is in preparation for that role that I would like to now take this opportunity to introduce myself.

First of all, I am a family man. My wife and I recently celebrated our 38th anniversary. We have two married sons and three wonderful grandchildren ages 2, 4 and 6. I am Métis and, although no one in my family has ever lived on an Alberta Métis Settlement, I can proudly trace my Métis heritage back to Manitoba through my paternal grandmother. My family tree research shows that my great-great-grandfather is listed in a book titled *Chippewa Half Breeds of Lake Superior* and church documents from the Assumption Church of Pembina record him as *a Buffalo Hunter* from *Red River.* Other documents include a copy of my great-great-grandmother's 160-acre *Scripf* application filed in Winnipeg on August 3, 1882, also listing her as a *half-breed.* Last year I had the privilege of exploring my roots by visiting this historical area of Manitoba.

My professional background involves having served 31½ years with the Edmonton Police Service (EPS), which included 15 years in management and senior management positions. I retired as the Superintendent in charge of Major Crimes Division in 1997. During my career, I performed duties as EPS Aboriginal and Multicultural Liaison Officer while assigned as Executive Assistant to the Chief of Police, and I acted as Presiding Officer in disciplinary hearings against police officers charged with misconduct under the *Police Act.*

Following my retirement from the EPS, I took on responsibilities as Instructor and Program Coordinator with the Yellowhead Tribal College Criminal Justice Program, teaching criminal justice courses to First Nations and Métis Settlement students from 1997 to 2003.

In February 2003, I was hired as Senior Advisor with the Office of the Métis Settlements Ombudsman. The responsibilities of this position have allowed me to interact with Settlement

members, Councils and Administration on all eight of the Métis Settlements. This has given me the opportunity to become familiar with the legislation, bylaws and policies which guide the Settlements in their daily operations. I have also attended and participated in: the Forum of Canadian Ombudsman Conference, the Conference of the International Ombudsman Institute, the United States Ombudsman Association Conference, and the Advanced Ombudsman Investigators Course.

I would like to take this opportunity to publicly acknowledge the accomplishments of Harley Johnson, our founding Métis Settlements Ombudsman. Harley accepted the offer to establish the Office of the Métis Settlements Ombudsman and moulded it into the independent, impartial and accessible office that exists today. This unprecedented accomplishment in the Canadian Aboriginal community is being watched with interest by such bodies as Indian and Northern Affairs Canada and a number of First Nations bands and agencies. The creation of the Métis Settlements Appeal Tribunal and the Office of the Métis Settlements Ombudsman are significant steps for the Alberta Métis Settlements as they demonstrate a commitment to fairness, integrity and accountability.

It has been my good fortune to serve and learn from Harley over the past four years. I intend to carry out his guiding principles which will soon be entrenched in law through the Regulations to the *Métis Settlements Act*. I also look forward to working with the experienced team of MSO staff in continuing to uphold our established mission, which states:

> *"The mission of the Métis Settlements Ombudsman (MSO) is to promote the rights and responsibilities of Métis Settlement Councils, staff, entities and members, through inspection, investigations and recommendations."*

While performing the functions, powers and duties placed upon me, I intend to take our organization to the next level by exploring ways to make our processes more efficient and effective. In this way we can do *our* part in assisting the Alberta Métis Settlements advance toward self-governance. This task will only be possible with the help and support of the Métis Settlements General Council; Settlement Councils and Administration; the Alberta International, Intergovernmental and Aboriginal Relations Ministry; the Métis Settlements Appeal Tribunal; the elders; Settlement members; and other key stakeholders. I look forward to working in partnership with those interested in accomplishing this goal.

Original Signed by:
Gary Jones

## Introduction to Staff

The Office of the Métis Settlements Ombudsman (MSO) has been open since April of 2003. Our goal is to provide exceptional service to the members, Councils and staff of the eight Alberta Métis Settlements.

Staff members as of March 31, 2007:

Left to right:

**Gary Jones,** *Deputy Métis Settlements Ombudsman*
**Harley Johnson,** *Métis Settlements Ombudsman*
**Terri Dorfman,** *Office Administrator*
**Chuck Moberly-McBurney,** *Advisor*
**Danielle Cardinal,** *Junior Advisor*
*Missing from the photo, **Kelly Rockwood**, *Advisor*

## Mentoring Program

Response to the MSO Mentoring Program has been positive. The purpose of this Program is to educate Settlement members on the principles of administrative fairness and conflict of interest, as well as to provide a working understanding of the review/investigation process. The MSO Office benefits from the experience and values the input and the shared knowledge from the Settlement perspective. The Mentoring student can, in turn, share information about the Office of the MSO with other Settlement members.

Criteria for the Summer Student Position/Mentoring Program require that applicants must be a full-time student attending a University or a Community College, between semesters, and/or recently graduated.

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**Summer Student Position:**

Clorice Ducharme joined the Office of the MSO in May of 2006. She qualified for the Program as she was a full-time student attending the University of Alberta (U of A) in the Native Studies Program.

Clorice worked in banking prior to attending the U of A. Attendance at the U of A was made possible in part by Human Resources Development Canada which funds the *Strategic Training Initiatives (STI) Program* offered through the Métis Settlements.

In addition to her studies and working for the Office of the MSO, Clorice volunteered for the 'Dreamspeakers Festival' and the 'Healing our Spirit Worldwide Conference.'

**Clorice Ducharme**
*Paddle Prairie Métis Settlement Member*

## Staff Training, Conferences and Presentations

Staff took part in the following meetings and presentations in 2006/07:

**Training and Conferences:**

- United States Ombudsman Association (USOA) Ombudsman Conference - Iowa
- Employment Standards Presentation

**Presentations:**

- Calgary Urban Aboriginal Initiatives
- Métis Settlements General Council – Mr. Beale/Review of Entities
- Grade 5 Class – Gift Lake School
- Numerous meetings with Councils, staff and public

**Invitations to Participate in Various Meetings and Social Functions:**

- Youth Conference – Elizabeth Métis Settlement
- Presentation to Fishing Lake Métis Settlement by George Cuff
- Presentation to Métis Settlements Appeal Tribunal
- 'Healing our Spirit Worldwide Conference' by Carole Brezinki – Métis Settlements General Council Booth
- Fishing Lake Career Day
- Meeting with Gift Lake Council -- Governance/Administration role
- Community Justice Program - Elizabeth
- Métis Women's National Council Golf Tournament (in support of Aboriginal AIDS awareness)
- Métis Settlements General Council Golf Tournament

** Various public organizations have expressed interest in this Office. Questions have been asked of the applicability and value of our process to their specific organizations and situations. This implies that other organizations are facing similar issues to those being identified within the Alberta Métis Settlements and are searching for methods to deal with them.*

# Memorable Events at the Office of the MSO

### Gift Lake School Field Trip

Teacher Audrey Anderson, from Gift Lake School, brought her Grade 5 class to Edmonton on a field trip. One of their visits was to the MSO Office.

### MSO Christmas Open House

The Office of the MSO held its annual Open House where General Council Executive, Settlement Councils and other guests were invited to attend.

This year, *Tom Ghostkeeper* (left) and *André L'Hirondelle* (right) provided musical entertainment for all to enjoy.

# Overview

## Introduction

Concerns have been raised in the past about the management and leadership of Métis Settlements. A 1999 Métis Settlements Appeal Tribunal Task Force looked into this issue and recommended an ombudsman-like function be created for the Alberta Métis Settlements. This was later supported by a feasibility study. Most Métis Settlement members and elders supported this recommendation.

The Office of the Métis Settlements Ombudsman (MSO) was created in 2003 to provide an independent and impartial place to take complaints about Settlements' management or leadership. It also exists to identify unfair or unjust complaints made against the Councils and staff.

Alberta's Minister of Aboriginal Affairs and Northern Development appoints the MSO based on a recommendation of a selection committee. The Minister delegates the MSO to receive complaints and to appoint inspectors and investigators as needed. The individuals appointed by the MSO have the authority to conduct independent inspections or investigations, with the powers of a Commissioner, under the Alberta *Public Inquiries Act.*

## Mission Statement

**The mission of the Métis Settlements Ombudsman (MSO) is to promote the rights and responsibilities of Métis Settlement Councils, staff, entities and members, through inspection, investigations and recommendations.**

## Guiding Principles

The mission will be accomplished utilizing inspections and investigations involving the principles of administrative fairness and ethical leadership (conflict of interest) guidelines. (In order to better understand the principles of **Administrative Fairness** and **Conflict of Interest,** checklists have been developed – please refer to Appendix C and Appendix D.)

## Objectives

By authority of a ministerial delegation, the Métis Settlements Ombudsman:

- ✓ will **assist** Settlement members and Councils to understand the concepts of administrative fairness and leadership issues.
- ✓ will **promote** appropriate standards for the delivery of Settlement services to the Settlement communities.
- ✓ will **accept** complaints from Settlement members who feel that an administrative error or injustice has occurred in their dealings with Métis Settlements Councils, staff, or a Council entity.
- ✓ will **accept** complaints from Settlement members who feel that a Métis Settlements Council, an individual Councillor, staff member, or an employee of a Council entity has been involved in a leadership conflict of interest.
- ✓ will **identify** unfair or unjust complaints against members of Métis Settlements Councils, Council staff, or an employee of a Council entity where there are frivolous complaints or rumoured allegations of impropriety.
- ✓ may **conduct** an investigation/inspection where a review of the complaint identifies sufficient evidence to indicate an administrative error or injustice may have occurred and/or a Council, Councillor, staff member or employee of a Council entity has acted in a real or perceived conflict of interest.
- ✓ may **inspect/investigate** any administrative fairness or leadership issue "on [the MSO's] own initiative." (*Métis Settlements Act)*
- ✓ will **communicate** the results of an inspection/investigation in any fashion the MSO deems to be appropriate, including recommendations to resolve a specific complaint or to improve a service delivery system.
- ✓ will **advocate** for any recommendation(s) made.

The Métis Settlements Ombudsman:

- ✓ cannot accept complaints about issues that occurred before March 31, 2002.
- ✓ may insist that all options available to a complainant be attempted before the MSO can become involved.
- ✓ is guided by the provisions of Section 171-175 of the *Métis Settlements Act.*

# Complaint Process

## Investigation and Resolution

It is the Métis Settlements Ombudsman's (MSO) job to hear complaints and concerns and to deal with them in the most appropriate way. When a complaint is received, the MSO will determine if there is enough evidence to start an investigation. If a review discovers that an error or irregularity was made, the MSO works informally with people to try to resolve the concern and to prevent the same error from occurring again.

Concerns that cannot be resolved through discussion or mediation are investigated. The results of investigations may be made public.

## Making a Complaint

Anyone may make a complaint to the MSO. However, an individual who has a complaint must first try to resolve the matter him/herself. This includes going through any formal appeal processes that might exist with Métis Settlements. Anyone who remains dissatisfied after appeals are heard is welcome to bring a complaint to the MSO.

**There is no fee for filing a complaint.**

## Complaint Criteria

**For a complaint to be considered:**

- The issue complained about must have occurred on or after March 31, 2002. Occasionally, an issue that occurred prior to March 31, 2002, may be reviewed if action (e.g. a decision) on a complaint was taken after March 31, 2002.
- The complaint should be in writing and include the name, address, telephone number and signature of the person making the complaint.
- The complaint must relate to the activities or business of an Alberta Métis Settlement Council, an individual Métis Settlement Councillor or staff.
- The complaint must involve alleged mismanagement, an unfair practice or a conflict of interest.
- The complaint must be based on facts or evidence.

***Four basic steps*** have been developed for the process of looking at a complaint:

**Further Inquiry:** This is when a complaint has been received, but there is not enough information to proceed. MSO staff contact the person who submitted the complaint to clarify the issue(s) or to make sure the issue is within the jurisdiction of the MSO.

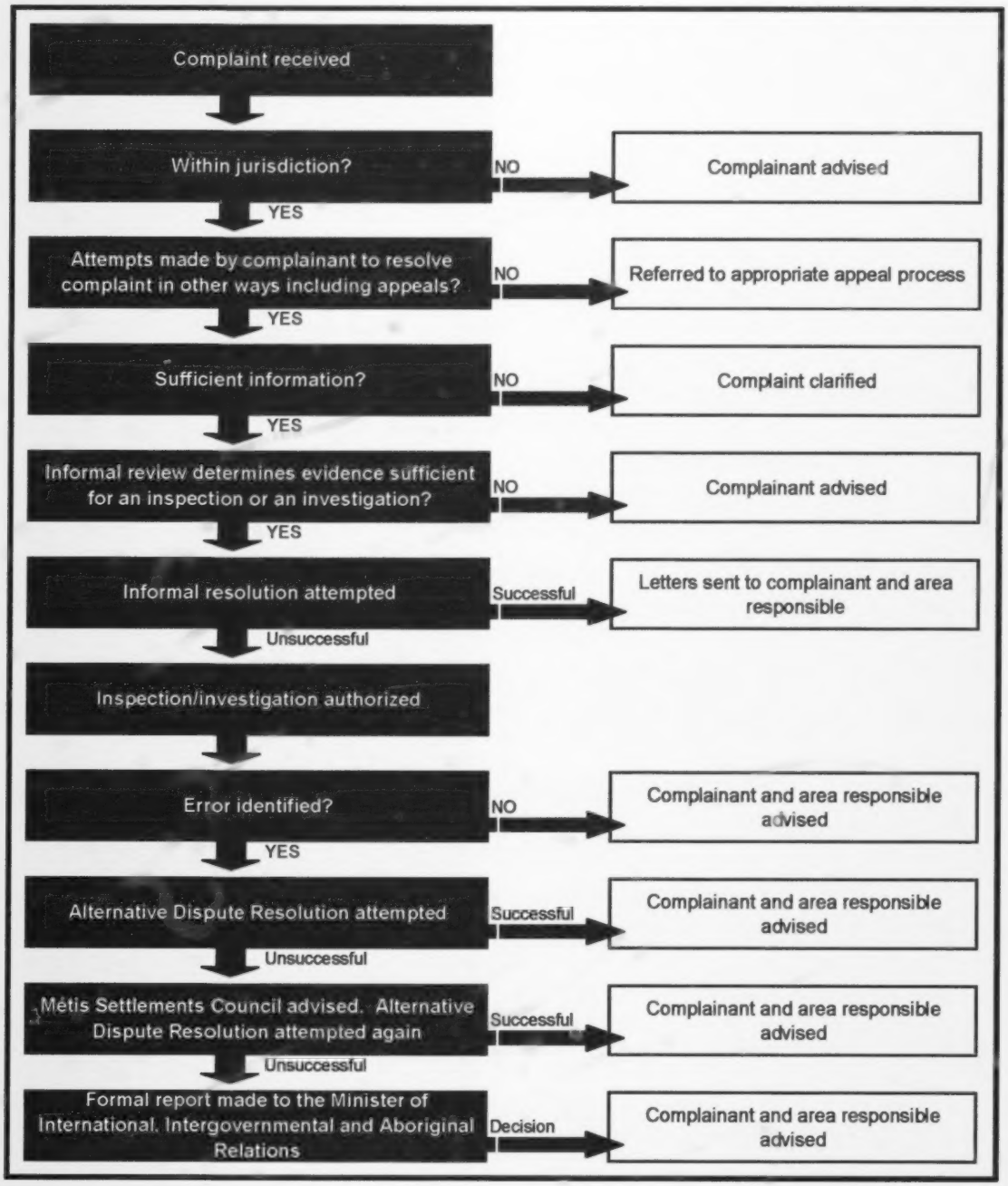
**Review:** Once the MSO is satisfied the issue is within jurisdiction and the complaint appears to have merit, a *review* is authorized. The advisor/investigator may then contact the Council, staff or entity to seek help in determining if there is evidence to suggest an error or inappropriate activity occurred. The advisor/investigator then submits a recommendation to the MSO based on the findings. That recommendation might be: to close the file, as there is a lack of evidence to support the complaint; to enter into a formal inspection or investigation; or to suggest any other action the advisor/investigator may feel is appropriate. Mediation techniques might be used during this stage.

**Inspection/Investigation:** If there is enough evidence to suggest an error occurred, or a Council, staff member or entity has acted inappropriately, and it cannot be resolved through mediation, a formal inspection or investigation is authorized under the *Métis Settlements Act* (MSA). Once appointed under the MSA, an inspector/investigator has the same power and authority as a Commissioner under the *Public Inquiries Act*. Normally, the person who completed the *review* would not be appointed as an inspector or investigator.

**Report:** If the inspection or investigation supports the findings of the *review*, mediation would be tried once again and a *report* would be submitted to the MSO with appropriate recommendations. Any person who might be negatively affected by a *report* is given the opportunity to present evidence or argument to the MSO as to why a recommendation(s) should not be accepted.

The process, while effective in most cases, is very time consuming. Options aimed at speeding up the process are being studied.

## Complaint Process Flowchart



## Statistical Information

The Office of the MSO keeps internal, confidential records on the complaints it receives. Statistics are kept to help identify trends and/or areas of concern and to provide direction and focus for the Office. The following chart shows the number of complaints received according to Settlement:

| Settlement: | Number of Complaints 2005/06 | Number of Complaints 2006/07 | Ombudsman's Own Initiative 2006/07 |
|---|---|---|---|
| Buffalo Lake | 116 | 53 | 29 |
| East Prairie | 54 | 47 | 13 |
| Elizabeth | 20 | 17 | 1 |
| Fishing Lake | 48 | 25 | 0 |
| Gift Lake | 25 | 21 | 2 |
| Kikino | 8 | 12 | 0 |
| Paddle Prairie | 49 | 26 | 0 |
| Peavine | 30 | 23 | 3 |
| Other | 4 | 1 | 0 |
| **TOTAL:** | **354** | **225** | **48** |

*This year, there was an identified need to separate areas that have been reviewed under the auspices of an Ombudsman's Own Initiative. Settlement members have called the MSO Office with specific concerns; however, due to fear of repercussion, the MSO has elected to review these matters under an Ombudsman's Own Initiative to protect the identity of the complainants.*

| | | |
|---|---|---|
| **Files Brought Forward April 1, 2006** | **224** | |
| **Complaints/Ombudsman's Own Initiative 2006/07 Total:** | **273** | **497** |
| Resolution of Jurisdictional Complaints/ Ombudsman's Own Initiative: | 226 | |
| Non-Jurisdictional Complaints | 20 | |
| Requests for Information | 27 | |
| **Total Complaints Resolved:** | | **273** |
| **Total Active Files as at April 1, 2007** | | **224** |

The total complaints received in 2006/07 can be summarized as follows:

**Complaints Received** - April 1, 2006, to March 31, 2007

| | |
|---|---|
| ➢ Jurisdictional Complaints/Ombudsman's Own Initiative | 226 |
| ➢ Non-Jurisdictional Complaints | 20 |
| ➢ Requests for Information * | 27 |
| **TOTAL** | **273** |

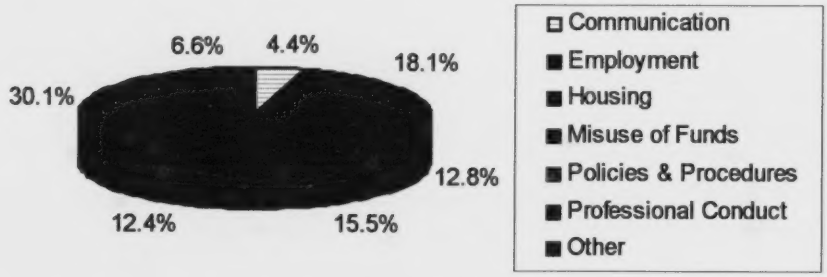
** Councillors and staff are continuing to use this Office as a resource for information and advice **prior** to making decisions.*

Complaints are broken down into **jurisdictional** (those which the MSO has the authority to look into) and **non-jurisdictional** (those outside MSO authority). Jurisdictional complaints fall within two categories: *Administrative Fairness* or *Conflict of Interest.*

**Jurisdictional Complaints/Ombudsman's Own Initiative**

| | Complaints | | Ombudsman's Own Initiative Areas of Concern | |
|---|---|---|---|---|
| **Complaint Categories:** | **Administrative Fairness** | **Conflict of Interest** | **Administrative Fairness** | **Conflict of Interest** |
| Communication | 7 | 0 | 3 | 0 |
| Employment | 27 | 10 | 3 | 1 |
| Housing | 26 | 3 | 0 | 0 |
| Misuse of Funds | 16 | 6 | 7 | 6 |
| Policies & Procedures | 16 | 6 | 5 | 1 |
| Professional Conduct | 28 | 21 | 11 | 8 |
| Other | 12 | 0 | 3 | 0 |
| **Subtotal** | **132** | **46** | **32** | **16** |
| **TOTAL** | | **226** | | |

**39% of the total Conflict of Interest complaints were regarding nepotism (favouritism shown to family members). This continues to be a significant issue within the Settlements.*



The MSO makes every attempt to bring about a positive conclusion (for both the complainant and for the party being complained about) through mediation and recommendations. Jurisdictional complaints were resolved as follows in 2006/07:

**Resolution of Jurisdictional Complaints/Ombudsman's Own Initiative**
Files Closed 2006/07

| **Disposition:** | **Administrative Fairness** | **Conflict of Interest** |
|---|---|---|
| Oral complaint/no formal complaint submitted | 32* | 18* |
| Inquiry made/referral given/resolution facilitated | 12 | 4 |
| Reviewed: Insufficient evidence to warrant inspection and/or investigation | 48 | 24 |
| Reviewed: Sufficient evidence identified and resolved through: | | |
| *-mediation/arbitration* | 1 | 0 |
| *-complaint withdrawn* | 10 | 2 |
| *-informal resolution successful* | 31 | 21 |
| *-recommendation made to Council; Council's response pending* | 3 | 0 |
| Inspection/Investigation: insufficient evidence | 0 | 0 |
| Inspection/Investigation: recommendation made/resolved through: | | |
| *-mediation/arbitration* | 0 | 0 |
| *-complaint withdrawn* | 0 | 0 |
| *-recommendation accepted and implemented* | 19** | 0 |
| *-recommendation made to Council; Council's response pending* | 1 | 0 |
| Formal report to the Minister | 1 | |

** "Oral complaint/ no formal complaint submitted" totalled 50. Signed Complaint and Consent Forms are required in order for this office to review a complaint. A possible explanation for these forms not being sent in is members' fear of repercussion; however, often the MSO Office has been a sounding board for members' concerns.*

***A number of recommendations are awaiting a response from different Settlements before those files can be closed.*

# Case Summaries

Every effort is made by this Office to avoid taking issues to formal investigation. The goal of the MSO Office is to resolve issues through a cooperative review; however, if appropriate resolution cannot be achieved, a formal investigation may be authorized by the MSO.

The following case summaries provide a sampling of the types of complaints the MSO receives. *Every attempt has been made to protect the privacy of the individuals involved.*

**Reversal of Former Council's Decision**

An individual challenged issues in a past election, incurring legal and court costs. The individual paid approximately 75% of those costs and requested Council pay the remainder. The Council at that time passed a motion to pay the balance of the costs, not requiring the repayment of funds.

The MSO learned the individual was not a member of Council when awarded the sum and therefore was not covered by Section 29 of the *Métis Settlements Act* which would allow a *Councillor* reimbursement. Council was not *legally* or *morally obligated* to pay any portion of the debt.

When the new Council learned of this payment, they made a motion to have the individual pay the Settlement back. When asked to enter into a *repayment agreement* for the outstanding amount, the individual chose not to do so.

The MSO commended the new Council for choosing to act in a *financially responsible manner* concerning the *questionable* use of Settlement funds; however, the MSO was not convinced Council had the power to overturn the *former* Council's decision and suggested they consider seeking legal assistance. As it was neither an issue of *administrative unfairness* nor a *conflict of interest*, the matter did not fall within the jurisdiction of the MSO.

**Unfair Repossession of Trailer**

An individual entered into an agreement to purchase a trailer from a Settlement entity. Unable to return to the Settlement for several months, the individual, upon return, found the trailer had been resold. The Administrator had sent a letter in that time notifying that the trailer had been repossessed due to abandonment, vandalism and for non-payment.

The MSO Advisor informed the Administrator that the repossession appeared to have been unfair and inappropriate since the sales agreement passed title for the trailer from the Settlement to the individual. Council instructed the Administrator to take corrective action and offered a different partially furnished trailer. The complainant accepted the Settlement's offer as a fair compromise.

As a follow-up to the review, the MSO recommended that Council, in the future, seek legal advice before repossessing property that is the subject of a sales agreement and

that all Settlement sales agreements should document the exchange of monies or other considerations at the point of sale.

The MSO acknowledged the Settlement's compassion for this complainant and the Administrator's professionalism in working with the MSO Office to arrive at a solution. All parties expressed satisfaction with the mediated resolution.

**Unfair Allocation of Timber Permits**

An application was made for a timber permit. The Administrator reduced the amount to half of what was requested. The following year, the individual cut the timber and immediately applied for a permit to cut the remaining half to efficiently utilize the equipment already on site. Months later, Council denied the request to cut the additional timber but advised that the matter would be reconsidered if the member reapplied for a timber permit. The individual brought the issue of unfair allocation of timber permits to the MSO Office.

After speaking with the MSO Advisor, the member did reapply for a timber permit but was put on a waiting list. Several months elapsed before Council approved the permit application, and the timber was cut.

After the additional section of timber had been cut, the complainant no longer wished to pursue the matter; however, a MSO review revealed a systemic non-compliance with the Settlement's Timber Management Bylaw which sets out that response to any permits or applications must be made within 7 days. The time lapse between the timber permit application and approval by Council was four months. According to Settlement staff, the processing of timber permits seldom complied with the 7-day time limit outlined in the Bylaw.

To avoid future breaches of the Bylaw, Council advised the MSO that a new bylaw, addressing the 7-day permit application process, would be introduced to the membership.

**Failure to Repair Septic Tank**

A complainant alleged a septic tank and pump-out had not been working properly for over a year and the Public Works Department failed to repair it. MSO Advisors examined the septic tank and found it to be in an advanced state of disrepair. In their view, it should have been considered a priority due to safety and environmental concerns.

After speaking with the MSO Advisor, the Public Works Director had the Housing Coordinator assess the matter. Within two weeks, the Public Works Department had ordered a new septic tank cover and installed the tank extension.

The complainant expressed gratitude to the MSO and the Settlement.

**Professional Conduct – Bonuses**

A Settlement member advised that all Councillors and staff of the Settlement were receiving Christmas bonuses. The concern was the general membership of the Settlement was not aware of the intent of the bonus at the time the budget was passed. It was also felt the funds could have been put to better use for things such as housing, repairs and/or medical assistance.

In reviewing this matter, it was identified by the MSO Advisor that the bonuses were budgeted for under the auspices of an "Employee Enhancement Benefit." It was also learned that the "Employee Enhancement Benefit" has been a budget item for a number of years.

Although the complainant may have felt the funds were misused, proper process *was* adhered to. In reviewing the budget, the MSO found the budget was passed by the general membership. The MSO found no evidence of *conflict of interest* or *administrative unfairness* in this complaint.

**Misuse of Funds by Former Housing Coordinator**

A Housing Director allegedly used housing budget funds to do $30,000 of *unauthorized* renovations to the Housing Director's home in *conflict of interest* and was not making the required payments.

The MSO *review* revealed that the Housing Director had applied for the housing renovation monies in the same manner as other Settlement members and was approved by Council. There was no evidence to support the claim of *conflict of interest*; however, it was revealed that payments were not being made to the Settlement. The MSO confirmed that the individual has since signed a new *repayment agreement* and is making monthly payments.

**Unfair Requirement to Pay Back Expense Monies**

The complainant received an expense cheque to attend a General Council meeting to be held in Edmonton. In addition, the complainant received a medical expense cheque to attend to a family-related medical matter following the conference.

On the first day of the conference, the complainant was apparently told that staying was not necessary as nothing more was going to happen. When leaving early for the family-related medical matter, the complainant failed to cancel the pre-booked hotel room in Edmonton.

Members who attend workshops and conferences are expected to stay for the duration of the event; if they leave early, they are required to reimburse the Settlement expense advances for the portion of the conference or workshop they did not attend. The Settlement also requires members to pay for hotel rooms booked and not cancelled.

The complainant's claim that having to repay the advanced monies was unfair was not supported by the evidence.

**Failure to Acknowledge Housing Application**

An MSO Advisor met with a Council in response to a complaint that they failed to acknowledge receipt of a housing application and provide reasons for non-selection. Council stated they would write a letter to the complainant outlining the reasons for non-selection and provided assurances that, in future, unsuccessful housing applicants will receive letters stating the reasons for non-selection. The MSO sent a *Letter of Understanding* to Council documenting the commitments made in the meeting.

The Housing Coordinator provided the MSO with a copy of the letter sent to the

complainant; while the letter did not make reference to the reasons for non-selection, the Housing Coordinator had contacted the complainant addressing the questions.

It was noted that Council's making housing selections *in camera* without the Housing Coordinator present makes it impossible for the Housing Coordinator to know the reason for any applicant's non-selection. The MSO recommended that, if Council wishes to continue making housing selections *in camera* without the Housing Coordinator present, Council should delegate someone the responsibility of informing *all* unsuccessful applicants, in writing, of the reasons for their non-selection.

**Unfair Employee Disability Benefits/Accessibility of Policies**

A Settlement Employee was forced to go on medical leave due to illness and had considerable difficulty obtaining medical benefits. To complicate matters, when requesting a copy of the "amended" Personnel Policy, it was learned that the Administrator had the *only* copy.

An attempt by the MSO Office to obtain a copy of the amended Policy from the Administrator resulted in the Administrator providing only one page of the Policy. The introduction to the Settlement Policy states:

*"This manual contains policies that apply to all employees of the (Settlement). Each employee is responsible for reviewing and complying with these policies."*

Council and Administration were advised by this Office that *all* employees are to have ready access to policies. The MSO Advisor was later assured by the Administrator that the *revised policy* had been placed in *all* the policy manuals in the various Settlement departments.

To receive short- and long-term disability benefits, an employer (in this case the Settlement) is required to complete and submit necessary documentation to the insurance company within 14 days in order for the insurance company to adjudicate the claim. There were a number of delays and obstacles in getting the proper documents processed to obtain the entitled monies.

With the intervention of this Office, the necessary documentation was finally completed; however, it took over three months. The MSO sent a letter to the Settlement advising that it was not only unfortunate but *unacceptable* to have such an excessive delay in completing the required forms.

**Conflict of Interest**

A Councillor was participating in all oil and gas negotiations with two major oil companies in the capacity of Director of a Settlement-owned company without declaring a *conflict of interest*, even though an immediate family member's company contracted with these same companies.

The review revealed that the Councillor's relative operates a company which is working for the two oil companies. When interviewed, the Councillor was adamant there was no personal financial interest in the relative's company and, when issues specific to the type of work performed by the relative's company are discussed, the Councillor leaves the meeting. This was confirmed by other Councillors.

The MSO found that the Councillor was not required to declare a *conflict of interest* on oil hauling issues but must declare a *conflict of interest* involving matters relating to work performed by the relative's company. There is no evidence to support the complaint of *conflict of interest*; however, Council was asked to keep in mind Section 39(3) of the *Métis Settlements Act* which states:

*"If a disagreement arises about whether a councillor has a financial interest in a matter before the settlement council, the council must decide by vote whether the councillor has a financial interest, and the councillor in question cannot take part in that vote, but is bound by it."*

**Unfair Housing Selection Process**

The housing selection process is seen to be unfair and a topic of concern and discussion on *all* of the Settlements. Allegedly, members who desperately require homes are not being considered for new homes, or members of Council or their family members get preferential treatment.

In an attempt to address the housing issue, one of the Settlements has appointed a Housing Selection Committee and implemented a Housing Task Force Committee.

The Housing Selection Committee makes housing selection recommendations by assessing and deliberating the housing applications prior to the presentation of the recommendations to Council. This process eliminates Council's direct involvement in the selection process; however, Council may either accept or decline the proposed recommendations.

The Housing Task Force Committee is comprised of members at large. The Committee will make recommendations to Council on methods of improving housing on the Settlement and the process of housing allocation. MSO Advisors have been invited to work jointly with the Housing Task Force Committee and periodically attend meetings.

The implementation of the Housing Selection Committee is a positive step by this Council towards a fairer housing selection process. The Settlement receives up to one hundred applications for new homes annually when there is only funding to offer a few; the formation of the Housing Task Force is seen as an constructive attempt to address this difficult housing shortage.

**Contravention of Housing Policy**

A Councillor received funds to make improvements to a private residence, owned by this individual, in breach of the Housing Repair Policy.

A Resolution of the Council Meeting Minutes showed that the Councillor left the room when Council made the decision to approve repairs for several applicants, including the Councillor's. By leaving the room, the Councillor did not participate in the discussion or decision and was not, therefore, in a *conflict of interest*. However, the MSO review did reveal that the home was not ten or more years old, breaching the Settlement Housing Policy which states *"... the housing unit must be ten or more years old."*

Council was informed of this breach of policy and advised that the Housing Coordinator and Administrator *should not* bring housing repair applications forward if the applicant is

*ineligible* based on criteria set out in the Settlement Housing Policy.

It appeared Council made this decision based on information from the Administrator and/or Housing Director. When confronted by the MSO Advisor, the Councillor offered to repay the monies. As this was an error of Council and Settlement Administration, the MSO recommended Council not attempt to recover the monies from the Councillor.

Council was advised by the MSO that they have a responsibility to ensure policies and bylaws of the Settlement are followed so that ineligible applicants are not given consideration in the future.

**Nepotism: Employment**

A Settlement member alleged *nepotism* in the hiring process for a position for which the complainant had applied. The complainant arranged to bring the concern before Council. Council was in agreement that an unfairness had taken place and they would look into the matter; however, they encouraged the complainant to contact the MSO.

The complainant was concerned as the three-person interview panel consisted of the *mother* and *two aunts* of the successful applicant, a blatant *conflict of interest*. The *review* revealed that Council did in fact instruct the Administrator to deal with the matter of disciplining the staff members involved. The MSO Advisor was informed that disciplinary letters were written to those involved and the Administrator was given instructions by Council to send out a directive informing all staff that *conflict of interest* and *nepotism* will not be tolerated.

The complainant was satisfied that the Settlement handled this matter seriously and took corrective action to prevent future occurrences of this kind and therefore did not wish to pursue the matter further.

**Personal Housing Budget Funds Withheld**

The complainant was one of the recipients of a new home. According to the budget bylaw, the cost of each home would be a specific sum of money including the costs of the installation of a driveway, power lines, natural gas, outdoor plumbing and a wood stove.

The Settlement Housing Policy permits members (should they not utilize the full amount for the above-mentioned items) to transfer the remaining funds towards other areas of the home. It was brought to the attention of this Office that, in some instances, in an effort to reduce costs, members will build their new homes onto the same site as their old home, thus saving monies reserved for driveways and power lines, as was the case in this situation.

A portion of the complainant's housing funds was withheld. The Public Works Clerk explained that the complainant had entered into an agreement with the Settlement in which the allocated monies for driveway, plumbing, gas and power lines would be returned to the Settlement should the complainant receive a new home in the future.

The complainant believed that other members who were in the same situation *received full entitlement* to their personal housing budget. Inquiries were made with the Administrator if some members were required to sign the

same agreement(s) as the complainant. A request was made to view these housing files. The Administrator then informed this Office that, prior to viewing the housing files, Council requested a meeting with the complainant in an effort to resolve the matter.

By way of a conversation with the Public Works Clerk, the complainant was advised that Council had passed a motion to restore the withheld housing monies.

**Misuse of Credit Card**

A complaint was received about the misuse of Settlement credit cards by a Councillor and the Administrator of a Settlement. In a meeting with the MSO Advisor, both individuals involved acknowledged the *personal use of the credit cards* and the outstanding balances accrued despite the *repayment agreements* that had been entered into.

Both individuals took immediate action by paying off the outstanding balances and returning the credit cards to the Settlement.

Although there was evidence to support the complaint of *misuse of funds*, the MSO review revealed there was no intent to *breach the public trust* and corrective action was taken by repaying the outstanding debts in full. However, the review identified that the Settlement did not have a policy in place to govern the use of Settlement credit cards.

Council also took immediate action when this issue was brought before them by drafting and approving a new Credit Card Policy which appropriately sets out the terms, conditions and criteria for future use of Settlement credit cards.

**Improper Notification of Board Position Changes**

A complaint of *administrative unfairness* was received when a Council failed to make proper notification of Board position changes. Unfairness was expressed on three counts: Council did not advise the individual that was being replaced as the Settlement representative (the individual found out at the Board meeting), a proper motion was never made to appoint the successor as the Board representative, and Settlement members were not given a fair opportunity to apply for the vacant Board representative position.

The *review* into this matter has revealed that members of the Settlement were treated unfairly by Council.

The MSO recommended that Council:

- **Implement a policy pertaining to the appointment of individuals to boards and/or committees. The policy would serve as a guideline for Council, Administration, and Settlement members and would define procedures to promote fairness and equitability in such appointments.**
- **Define, in the policy, the following items: a standard process for individuals to apply for vacant representative opportunities; advertisement procedures; a general eligibility criteria list; procedures to remove individuals from boards and/or committees; an overview of Council's ability to appoint who they deem suitable; and the rights and responsibilities of appointed individuals, Administration, and Council.**
- **Communicate effectively all future vacant representative opportunities to Settlement members via public advertisement.**

The MSO Advisor was informed that the Administrator and Council would meet with

the Board Development Officer to develop this recommended policy and that the Board Development Program would focus on improving governance as well as policy development.

**Failure to Complete Renovations**

Home repairs were requested by a senior on a number of occasions, but the individual never received an adequate response. It was also alleged that allocation of renovations was being awarded to homes which did not require them.

The MSO Advisor spoke with the Public Works Department which indicated Council had approved a sum of monies for repairs to the home. The repairs would include items such as new flooring, wall/ceiling repairs (including new paint), bathroom refinishing and new kitchen cupboards.

Unfortunately, the Public Works Department was faced with delays in receiving materials, finding a carpenter, and due to the winter season. Six months later the repairs had still not commenced as the Public Works Department was waiting for the individual to move furnishings to make way for construction.

The MSO Advisor was informed by the complainant that family matters and weather issues had delayed the furniture removal; in addition, the individual wanted the front porch to be repaired over and above the approved repairs.

There are limited funds available for Settlement distribution to members. It is difficult to meet the needs of *every* Settlement member; however, Council works to the best of their ability to allocate these monies. The MSO Advisor suggested the possibility of applying for grant money available to seniors. The grant program is federally funded to assist seniors in covering costs for items such as home repairs. Council, Administration and the Public Works Department were very helpful in resolving this concern.

**Policies and Procedures: Salary Advances**

A Settlement employee called for advice, indicating that a Councillor was granted an entire month's cheque in advance. The concern was that the next month's cheque would also be asked for in advance, breaching section 25(1)(m) of the *Métis Settlements Act*. The MSO Advisor checked the Settlement Personnel Policy which determined that Councillors are not included in the definition of "staff."

The MSO Advisor agreed with the employee's assessment that requesting the entire next month's cheque in advance should be considered a loan for which a *repayment agreement* is needed. Failure to have a signed *repayment agreement* could be interpreted as a breach of the *Métis Settlements Act* which states that Councillors indebted to the Settlement in excess of $250 without a current *repayment agreement* must resign their position. The MSO Advisor recommended the Councillor's request should be documented in a memorandum to Council and should not be authorized without Council's approval. The other option would be to have the Councillor sign a *repayment agreement*.

**Duties of Councillors**

A question arose about the duties of Councillors relating to administration. A

Councillor was at an Examination for Discovery as a result of the Settlement being sued. The claimant's lawyer asked a number of questions related to administration. The Councillor told the lawyer that Councillors are elected to a governance role, not administration.

The Councillor wanted to ensure this information was correct, wanted to know the duties of a Councillor, and wanted information about which legislation they come under. The MSO Advisor confirmed the role was that of "governance" and not "administration." **Governance** is *"the development of policy objectives for the benefit of all Settlement members"* and **administration** is *"[those] hired to get the job done."*

The Advisor provided copies of the Settlement's policies regarding the "Roles and Responsibilities of Councillors." The Councillor expressed gratitude for being able to come to our office at any time to seek advice.

## OMBUDSMAN'S OWN INITIATIVE

### Members' Concerns - Ombudsman's Own Initiative

An Ombudsman's Own Initiative was commenced as a result of members' concerns against a Settlement entity. The concerns included *conflict of interest* and bylaw issues as well as misappropriation of funds. MSO Advisors have been working cooperatively with the entity's Board of Directors.

*Meeting Minutes/Financial Statements*

Meeting minutes and financial statements were not provided upon members' requests. Settlement members also felt that the failure to post meeting minutes for public viewing was not conducive to acceptable business practices. Meeting minutes for a six-month period also went missing, giving the impression of mismanagement.

The MSO was advised Settlement members now have access to meeting minutes and financial statements upon request to the Board, and meeting minutes are posted for public viewing. The entity is also taking advantage of the Settlement Newsletter to promote the activities of the association. The new Board's transparency has decreased allegations of mismanagement. Members are pleased they are now being informed of the entity's business.

*Special Meetings*

Members were not being advised of special meetings contrary to the entity's bylaws. The Board has assured MSO Advisors that members are now provided with adequate notice of upcoming meetings, whether special or regular. The Board has addressed, in their bylaws, how special meetings will be called, showing due diligence in correcting this omission.

*Contract Work*

Previous Boards failed to advertise for, and awarded themselves, contract work. Settlement members felt that contract work should be advertised. Financial records for the entity dating back almost 10 years were *reviewed,* and it was found that the majority of the contract work went to Board members and their relatives. MSO Advisors were assured that jobs, including contract work, are now being advertised. Board members who are submitting a bid tender are also required to remove themselves from the deliberations and decisions, thus avoiding a *conflict of interest.*

*Grazing Lease*

A Grazing Lease between the Settlement and the entity should have been renewed, in accordance with the five-year mandate. The MSO Office has been unable to locate documentation to verify it was renewed. It appears the entity is operating without a legal agreement in place.

It is critical for the Board to ensure a legal agreement is in place to protect both the entity and the Settlement. The MSO strongly suggested the entity's Board of Directors meet with the Settlement Council to further discuss this issue.

It was learned that the entity has since been meeting with Council on the unsigned Grazing Lease.

Also brought to the MSO Advisor's attention was the breach of a sublease agreement between the entity and a company. The company incurred an outstanding debt to the entity, which was brought to the Board's attention. A motion was passed to file a claim with the Provincial Court of Alberta (civil) against the company for the outstanding debt, and the MSO has since been advised this was done. The Board took the appropriate action and displayed leadership and accountability to its membership.

*Bonuses*

An issue involving bonuses was brought to the attention of the MSO. A Board of Directors had given themselves bonuses and honorariums in contravention of the entity's bylaws. The matter was forwarded to the Royal Canadian Mounted Police and was, therefore, no longer under the jurisdiction of this Office.

*Misappropriation of Funds*

A complaint was made about a cheque which was issued to a Settlement member from the entity's account. The cheque was to be used for a specific purpose. Less than half of it was used for the intended purpose, and the remainder was alleged to have been used for a dinner for a select few members. The review revealed that there was no documentation supporting these expenditures.

It is vital to ensure proper documentation is submitted to the entity's accounting office to ensure monies issued are used for the purposes they were intended. This complaint is a prime example of how there can be an *appearance of misuse* if there is insufficient documentation to support an expenditure. Board members are responsible to ensure funds are spent in accordance with Board objectives.

This matter was forwarded to the Royal Canadian Mounted Police and is no longer under the jurisdiction of the MSO.

*Board of Directors*

A Board was said to consist of Council members and Settlement employees. As Council is required to ratify any major decisions that affect the Settlement pasture, it is virtually impossible to avoid being in a *direct conflict of interest*. Council members may make or influence decisions that would benefit themselves and not the entity they are serving.

The Board of Directors identified this as an area of concern and revised their bylaws to ensure that elected officials will not be permitted to sit on the entity's Executive. The MSO was pleased with the Board's efforts, and members appeared to be pleased that there are no Councillors sitting on the Executive.

The MSO was satisfied the Board is looking to improve the operations of the entity, particularly as the Board eventually plans to create policies and procedures to serve as guidelines for the Board and its employees. The Board of Directors has taken their fiduciary responsibility seriously and has set in place a system of accountability to avoid the recurrence of complaints of this nature.

**Financial Mismanagement - Ombudsman's Own Initiative**

As commented on in last year's annual report (under the Case Summaries section entitled **"FORMAL INVESTIGATION – Repayment Agreements"**), a group of Settlement members had submitted numerous complaints against a Settlement, including *mismanagement of funds.* The Settlement Council agreed to a cooperative review by the MSO Office. It was mutually decided that the review would focus on accounts receivable relating to housing, loans, contracts and a number of Settlement entities. The results of the MSO review would be brought to Council's attention by way of recommendation for Council's decision.

Council later reneged on the agreement by passing a resolution restricting the review to only the housing files. There was sufficient information to warrant an investigation, and the MSO appointed PricewaterhouseCoopers (PwC) as an investigator under *Section 173* of the *Métis Settlements Act* to investigate *"... Any outstanding debts to the (Settlement) and/or its Entities with or without a Contract, Promissory Note, or Repayment Agreement in place and whether or not the Contracts, Promissory Notes, or Repayment Agreements which are in place are being adhered to."*

PwC made a number of recommendations, which the MSO presented to Council.

Council accepted the recommendations and drafted a plan for corrective action; the **Action Plan** was reviewed and was accepted as appropriate to address all recommendations outlined in the PwC Final Report.

The MSO Advisor was assigned to monitor progress as the Settlement implemented the plan and to conduct a *review* into the PwC recommendation stating:

*"We strongly recommend that any loans extended to members currently serving on the Settlement Council be audited/reviewed and lending policies relating to council members be reviewed."*

The Settlement's Finance Director and Administrator updated loans, debts and repayment information involving all the serving Councillors and turned this information over to the MSO Office. Two Councillors were found to be in an apparent breach of Section 25(1)(m) of the *Métis Settlements Act* as they had significant debts to the Settlement and *repayment agreements* **were not** being adhered to.

Council accepted and acted on these recommendations and decisions were made regarding the terms of new *repayment agreements.* Both Councillors signed new *repayment agreements* and a third Councillor voluntarily agreed to increase payments so as to be more consistent with other colleagues on Council and to pay off loans in a *more timely fashion.*

The MSO was satisfied that the Settlement responsibly addressed *all* the PwC recommendations respecting accounts receivable involving loans, and the complaint of financial mismanagement was closed.

**Forensic Review - Ombudsman's Own Initiative**

In 2005, a Settlement Council made a motion to have the MSO and the Minister of Aboriginal Affairs and Northern Development conduct a *forensic audit* of the Settlement Corporation and its entities. The audit was commented on in last year's annual report under the Case Summaries section entitled "**Forensic Review – Overview.**" At that time, eleven of the issues had been reviewed and closed. Numerous recommendations had been made to Settlement and Administration, and the MSO was awaiting replies. In December 2006, the MSO Advisor received a letter from the current Settlement Council indicating they would no longer participate in the *cooperative forensic review.*

The following are examples of the issues which have not yet been addressed by the current Council although recommendations have been made by the MSO.

*Mismanagement of Settlement Entities – Outstanding Debts*

The MSO Office conducted a *forensic review* into the operations and financial transactions of a Settlement-owned entity.

The entity's Board of Directors is made up of Councillors and the Administrator. Elected officials and employees of the Settlement are allowed to purchase items from this entity on a credit basis. They sign an agreement with the entity and sign a *repayment agreement* with the Settlement. The Settlement then collects the money for the entity and credits the debtor's account.

During the *forensic review*, it was found that a number of the *repayment agreements* had not been properly signed or dealt with by the Settlement Administration. Also, in some cases, elected officials and employees were not current with their payments as per the agreements with the entity and Settlement. Failure to have a signed *repayment agreement* could be interpreted as a breach of section 25(1)(m) of the *Métis Settlements Act* which states that Councillors indebted to the Settlement in excess of $250 without a current *repayment agreement*, or without *making regular payments* to honour the *repayment agreement*, must resign their position.

The *forensic review* found that there were outstanding debts owed to the entity in excess of $100,000 (although a number of individuals *overpaid* the amount owed and the monies had not been refunded). Some of these debts were owed by both former and present elected officials, employees, and Settlement members. A number of the outstanding accounts have been in arrears for a considerable length of time and there is little or no prospect of collecting some of the debts.

The entity operates out of space located in a building in a nearby town. The Settlement owns this building and operates it as a numbered company. The entity is supposed to pay monthly rent to the numbered company; however, the entity has not been invoiced for rent since 2005. The *Review Team* also discovered that loan payments to service a $300,000 debt to the numbered company from the entity have not been invoiced since July 2005 but show on their accounts receivable listing.

It has been noted that, as of March 2006, the entity has accounts receivable in excess of $100,000 and a loan to the numbered company in excess of $300,000 for a total deficit of approximately $400,000.

In addition to this, it was learned that the Board of Directors interfered with the operation of the entity by going on buying trips and establishing credit policies that were self-serving.

In the latter part of 2004, an investigation was carried out by this Office concerning the number of outstanding debts owed to the Settlement and its entities by Settlement members. The investigation was to determine whether *repayment agreements* were in place and if the members were current with their indebtedness to the Settlement and its entities. It was found that there were a number of Settlement members and non-Settlement members who owed monies to the Settlement and the entities. Also, there were a number of these members who did not have *repayment agreements* in place and, in some cases, those that did were not abiding by the terms of the *repayment agreements*.

The investigation made a number of recommendations as a result of the investigation in 2004 and 2005. It appears that *none* of those recommendations concerning the entity were ever implemented.

The MSO sent a letter in March 2006 concerning the findings and providing nine recommendations:

1. **The Council and Board of Directors should review the credit policy and consider stopping all questionable credit practices.**
2. **The Council and Board of Directors should review the viability of this entity. The Council and Board of Directors should review all of the accounts receivable and determine which of those accounts they deem uncollectible. Consideration should be given to writing those particular accounts off, in consultation with [an accountant].**
3. **The Council should hire someone with collection expertise to pursue the outstanding accounts. A Collection Agency or Small Debts Court may have to be considered.**
4. **The Council should appoint a Settlement member with a business background to liaison and assist the Manager of the [entity] when required.**
5. **Regular monthly meetings should be held by the Board of Directors, in order that they are duly informed about the overall operations and new developments of the entity.**
6. **The Board of Directors should ensure they follow their mandate regarding policy and procedures and not take on the role of Administration or Management.**
7. **The Council and Board of Directors should consider entering into a feasibility study with a professional organization to determine if [the town] and surrounding area can sustain the mandate of [the entity].**
8. **All accounts payable and receivable should be current and be presented to the Board of Directors at the monthly meetings.**
9. **Buying trips should be left to the Manager and not the individual members of the Board of Directors.**

To date, there has been no response from Council.

*Mismanagement of Program Funds*

A number of allegations were brought to the attention of this Office stating that money from the Settlement's Aboriginal Head Start Program had been diverted to other unrelated projects on the Settlement.

The *Review Team* performed a *thorough* review of the financial transactions of the program. Concerns regarding some of the entries at the end of the 2003-2004 fiscal year were

identified. Several purchases were made by the Aboriginal Head Start Program from the Settlement which appeared to have been done in order that the Aboriginal Head Start Program could expense the *full amount of funding* they had received from the Public Health Agency of Canada.

The only real concern was with an invoice dated March 31, 2004, in an amount over $14,000.00 which was posted as "*Aboriginal Headstart Work to be Completed.*"

Upon taking a closer look at this transaction, it was determined that this was a transfer of funds out of the Aboriginal Head Start Program to the Settlement in order to retain funds rather than refund it back to the Public Health Agency of Canada (*the funding agency*). Also noted was that this is not the correct way to record the expense according to *Generally Accepted Accounting Principles* even if it was the intent of the Director of the Aboriginal Head Start Program to eventually use these funds for the program.

This transaction had caught the attention of some members of the Settlement who thought the funds were being earmarked for a non-related project and who were duly concerned. It appeared to them that there was a possible misappropriation of funds involved, though the review revealed that this was not the case.

The following recommendations were made to the Settlement Council and Administration:

- **Ensure that surplus funds at the end of the fiscal year are dealt with in a manner that is approved by the funding agency.**
- **Ensure that all purchases are recorded to the appropriate fiscal year.**
- **Ensure that all entries are posted as per** *Generally Accepted Accounting Principles.*

This particular transaction was the only anomaly the *Review Team* identified in the Aboriginal Head Start Program. The Public Health Agency of Canada was notified by this Office of the anomaly and took the appropriate actions to recover the monies.

*Oil and Gas Payments to Non-Settlement Members*

A total of 110 people received Oil and Gas Royalties from the Settlement in 2004 in the amount of $1,000 each. A number of people alleged that some of the recipients should not have received the monies as they were not considered to be resident homeowners.

A motion was made supporting the distribution of the royalties to *"only resident homeowners."* The motion, in itself, was not clear as it did not identify any dates of residency for eligibility. It was acknowledged that it is difficult to create such a residency list. Questions were asked of past and present Administration and Council as to the process used to determine who would be deemed eligible. Some indicated it was the responsibility of the Finance Department and, more specifically, the Director of Finance. The Acting Administrator and a Committee of Council went through the membership list and determined who was eligible to receive the $1,000 royalty cheque. It was alleged that the Director of Finance disputed some of the names on the list as not being eligible, but the Director was told by members of Council to comply with the approved list and issue the cheques accordingly. There were a number of discussions concerning the distribution of the cheques, and it was pointed out that Council had the final authority.

Once the cheques were issued, the same two Councillors who made and seconded the *motion* to have the resident homeowners receive the royalties, signed the royalty

cheques. One would believe the two Councillors acted with due diligence when authorizing each payment.

The *review* revealed a number of weaknesses in the way the *motion* was worded. The MSO made a number of recommendations to Administration and future Councils in order to avoid the conflict and controversy that occurred with the distribution of the royalties:

- **Include in the motion the definition of a resident for the intended purposes of the motion.**
- **Include in the motion the dates that relate to the residency.**
- **Have Administration and Council continue to approve the list of eligible recipients prior to the Finance Department issuing the cheques.**

*Missing Equipment*

A number of members believed equipment belonging to the Settlement and one of its Corporations was missing and could not be accounted for. There were allegations that pickup trucks, horse trailers and a post pounder were some of the items taken from the compound and were now at unknown locations.

MSO Advisors obtained a list of all mobile equipment owned by the Settlement. The *Review Team,* accompanied by the Public Works Director, conducted a search to various locations, and every piece of mobile equipment was located and accounted for. Each piece of equipment was photographed with the license plate in full view and serial numbers were obtained wherever possible. The *Review Team* worked closely with the Finance Department.

Two pieces of equipment were of concern to the *Review Team* – one horse trailer and the post pounder. The horse trailer was in a location that could not be accessed by the *Review Team* on the first inspection. The post pounder (with a flat tire and structural damage) was located at a private residence. The MSO Advisor was informed the post pounder had been going from one farmer to another without ever being serviced or brought back to the main shop. The unit was inoperable and needed repairs. The MSO Advisor was advised that when the equipment is passed from member to member, there is no preventative maintenance done and no one seems to know which individuals incurred the damages.

Recommendations were made by the MSO:

- **All equipment should be safety inspected prior to use by a third party.**
- **Consideration should be made to require a cash deposit on equipment.**
- **Equipment should be returned to the maintenance shop and inspected.**
- **Deposits should be returned once inspections have been completed.**

*Accounting Procedures*

A former Council and Administrator had numerous concerns relating to procedures and operations carried out by the Settlement's Finance Department. The MSO *Review Team* met with the Settlement Accountants, Administration, Finance Personnel, a former Director of Finance, a former Administrator, and former Councillors to discuss various aspects of the operations of the Settlement's Financial Department.

During the *review,* it was noted that the Finance Department is an extremely busy area within the Settlement building. There was little or no security within the office during business hours and Settlement members were able to walk into the Finance Department at

their leisure. At any given time, there were confidential documents in plain view showing an apparent lack of concern regarding *Freedom of Information and Protection of Privacy* issues.

The MSO recommended access to the inner office of the Finance Department should be curtailed to authorized employees only. A Dutch door installed in the entrance way would stop all unauthorized traffic; Finance staff would attend at the Dutch door and address the concerns of the Settlement members. This would not only address the potential breach of *Freedom of Information and Protection of Privacy*, but could increase the efficiency of the office as there should be fewer interruptions during the day.

The MSO stated that Administration and future Councils should ensure that *qualified* staff is in place in the Finance Department, and staff should be encouraged to take additional courses and obtain their accounting accreditation if they do not already have such credentials.

During the *review*, it was noted that, on numerous occasions, policies and procedures were not followed by elected officials and administrative personnel. The administration policies and procedures manuals were reviewed and were found to be *excellent documents*. Settlement employees and Councils should be encouraged to familiarize themselves with the complete manual and, more specifically, those areas that pertain to their workplace or tasks they are required to perform.

Councils and Boards of Directors should review the Policy manual entitled "Roles and Responsibilities of Council." All Councillors should familiarize themselves with:

- **The *Métis Settlement Act***
- **Roles & Responsibilities of the Policy and Procedure Manual**
- **Orientation**
- **Responsibilities**
- **Corporate direction**
- **Separation of Council and Administrative Officers**
- **Conflict of Interest Issues**
- **Responsibilities of the Chairman**
- **Responsibilities of the Administrator**
- **Roles of Settlement Members**

The Policy and Procedure Manual also has program philosophies, goals and directions. These should be reviewed over a period of time as the information contained therein may be somewhat overwhelming. Council should review the previous year's financial statements and *then* decide on long-term goals and directions. Council should ensure they always deal with a balanced budget.

The Administrator should enforce the policies and procedures already in place and ensure the separation of powers between policy makers and the administrative officers. All managers should be made aware of all the policies and procedures pertaining to all departments. All staff should be orientated as to their roles, responsibilities and procedures.

### Councillor's Conduct - Ombudsman's Own Initiative

An Ombudsman's Own Initiative was authorized when a number of Settlement members called our Office with concerns about the Summer Student Program. The concerns included program advertisement deficiencies and *conflict of interest* issues with regard to Councillor interference in the hiring process.

Various complaints were received, alleging that the Summer Student Program was never posted, the advertisement was not posted long enough, the *previous* Strategic Training Initiatives (STI) Coordinator notified students/parents of the program by telephone whereas the present Coordinator did not (as a result, a few students missed the application deadline), and that two Councillors were attempting to influence the STI Coordinator to allow their children to participate in the Program as they had missed the deadline date.

The review has shown the Program advertisement was posted at several locations. Settlement Personnel Policy states that *"Available jobs shall, whenever possible, be posted for at least two weeks before the competition's closing date, in order to provide the opportunity for all interested individuals to apply."* The position responsible for the creation and posting of the advertisement was *vacant* and the task was thrust upon the STI Coordinator at the last minute. As time was of the essence, it was not possible for the Program to be advertised for *the full two weeks.*

It is also common knowledge throughout the Settlement that this Program was offered during the summer months. The former STI Coordinator and former Summer Student Coordinator confirmed it was *not* standard practice to contact each student/parent about the Program.

This program was designed to give students an opportunity to gain *meaningful employment experience* which prepares them to enter the workforce. To telephone each student/parent would take away from the *realities* of finding employment in real life. Looking at the facts, there were twenty-six students who complied with the deadline date and only three students who missed it.

A directive was signed at a subsequent Council meeting to allow *all* students, including those who missed the deadline (two were children of Councillors), to participate in the Program. After the meeting was called to order, one of the Councillors declared a *conflict of interest* and was removed from the deliberations (as the decision could benefit a family member). The other Councillor did not declare a *conflict*, breaching Section 39(1) of the *Métis Settlements Act* which states a Councillor must not take part in the deliberations or vote on a matter to which there would be *"any financial interest* in a matter before Council."

The Councillor who was *in conflict* was previously advised by the Settlement Administrator of the potential breach of the *Métis Settlements Act* prior to attending the meeting and *still* chose to participate in the deliberations.

Both Councillors acknowledged contacting the STI Coordinator directly when *their* children missed the deadline and were not accepted into the Summer Student Program. The STI Coordinator remained firm on the decision to proceed with the program without those who missed the deadline date.

The review identified it was improper for the Councillors to go directly to the STI Coordinator. Proper procedure would have been to contact the Administrator. Concerns brought to the attention of individual Councillors need to go through the Settlement Council. This is to ensure that *all* Settlement members are treated equally; preference should not be given to those who are friends or relatives of a Councillor.

MSO Advisors met with the Councillors and advised them of the proper procedures to

follow when dealing with issues pertaining to administration. Individual Councillors should *never* direct employees on how to conduct business. It is important that Councillors understand the difference between governance and administration. **Governance** is *"the development of policy objectives for the benefit of all Settlement members"* and **administration** is *"[those] hired to get the job done."* It appears the line was crossed between the two.

The offending Councillor was advised by the MSO Advisor that there was a moral obligation to resign from Council for breaching section 39 of the *Métis Settlements Act*. Both Councillors have been advised verbally and in writing of their involvement in this matter, and a letter was sent quoting the applicable sections of the *Métis Settlements Act*:

***Conflict Disclosures***

*39 (1) A councillor must disclose to the Settlement council any financial interest that the councillor has in a matter before the council.*

*(2) If the matter in which a councillor has a financial interest*

*(a) is to be decided by a resolution, the councillor must not take part in the deliberations of council on that matter or vote in the matter…*

Consequences for breaching Section 39 are subject to Section 25 of the *Métis Settlements Act* which states:

***Disqualification***

*25 (1) A councillor is disqualified from remaining on the Settlement Council if*

*(o.1) the councillor contravenes section 39…*

The classic role of an Ombudsman is to take the *remedial* approach and educate Settlement Councils, Administration and members on fair and equitable practices to prevent occurrences such as this. The Councillor, when questioned, was very forthright, indicating sorrow for the breach and ensuring it would never happen again. The MSO took into consideration the Councillor's limited experience and did not press for a resignation. A different course of action would take place should a similar situation occur in the future.

# Appendix A

## Ministerial Order

**Excerpt from the Ministerial Order**
**appointing the**
**Métis Settlements Ombudsman**

I, PEARL CALAHASEN, Minister of Aboriginal Affairs and Northern Development, pursuant to section 235 of the *Métis Settlements Act*, authorize Harley Johnson to exercise or perform the powers and duties conferred on me under the following sections of the *Métis Settlements Act*:

Section 171(1)(a),
Section 171(1)(c) except insofar as it applies to the General Council,
Sections 171(3) and (4),
Section 172(1),
Section 174,
Section 175(a), and
Section 175(c) except insofar as it applies to the General Council.

As provided in section 235(1) of the *Métis Settlements Act*, this authorization does not exclude my authority to exercise any power or duty under the above-mentioned sections of the *Métis Settlements Act*.

This Order comes into force April 1, 2003.

## Budget Variance Report

### Office of the Métis Settlements Ombudsman
### as of March 31, 2007

| | Budget Allocation | Expenditure | Balance |
|---|---|---|---|
| Staff | $ 357,500.00 | $ 368,882.12 | $ (11,382.12) |
| Accounting | $ 3,500.00 | $ 4,951.94 | $ (1,451.94) |
| Communications | $ 11,000.00 | $ 10,339.93 | $ 660.07 |
| Corporate Income Tax * | $ 1,600.00 | $ - | $ 1,600.00 |
| Equipment Rentals/Lease | $ 2,200.00 | $ 1,937.08 | $ 262.92 |
| External Contractors | $ 15,000.00 | $ 62.50 | $ 14,937.50 |
| Insurance | $ 3,200.00 | $ 4,188.90 | $ (988.90) |
| Interest/Bank Charges | $ 40.00 | $ 39.00 | $ 1.00 |
| IT Support | $ 15,000.00 | $ 6,000.00 | $ 9,000.00 |
| Legal | $ 17,000.00 | $ 4,765.28 | $ 12,234.72 |
| Maintenance/Repairs | $ - | $ 66.95 | $ (66.95) |
| Non-Rebatable GST ** | $ 12,000.00 | $ - | $ 12,000.00 |
| Office Supplies | $ 6,500.00 | $ 3,802.82 | $ 2,697.18 |
| Outreach | $ 2,400.00 | $ 4,072.16 | $ (1,672.16) |
| Postage/Courier | $ 300.00 | $ 33.73 | $ 266.27 |
| Special Investigations | $ 75,000.00 | $ 103,137.65 | $ (28,137.65) |
| Telephones/Internet | $ 8,000.00 | $ 7,731.54 | $ 268.46 |
| Training & Development | $ 6,800.00 | $ 3,521.06 | $ 3,278.94 |
| Travel | $ 25,000.00 | $ 17,810.10 | $ 7,189.90 |
| Vehicle Lease | $ 10,000.00 | $ 11,430.61 | $ (1,430.61) |
| Vehicle Maintenance & Repair | $ 2,000.00 | $ 817.87 | $ 1,182.13 |
| Vehicle Parking/Building | $ 960.00 | $ 960.00 | $ - |
| **TOTAL** | **$ 575,000.00** | **$ 554,551.24** | **$ 20,448.76** |
| | | Carry-over 2005/2006 | $ 20,376.93 |
| | | GST Refund Oct-Mar | $ 3,275.40 |
| | | Year End Accruals | $ (7,500.00) |
| | | | **$ 16,152.33** |
| | | **2006/2007 Balance Forward** | **$ 36,601.09** |

Notes:

* Not applicable as this Office operates as a "non-profit" company funded entirely by the Provincial Government.

**Included in expenditures.

# Appendix A

## Administrative Fairness Checklist

### Introduction

An important step along the road to self governance and self regulation of Alberta's eight Métis Settlements is the confidence that everyone is treated fairly and with respect, especially when dealing with Councillors, decision makers and persons in positions of authority.

This Administrative Fairness Checklist is prepared to guide Council, staff, members and other entities in their daily business dealings with each other. Answering the following questionnaire honestly will help decide whether business on a Settlement is being conducted as fairly as possible.

**Fairness:**

- Are all proceedings conducted in a fair and open manner?

**Understanding the Process:**

- Do decision makers, Councillors and persons in positions of authority ensure that everyone understands the decision-making process?

**Impartiality:**

- Do decision makers, Councillors, and persons in positions of authority approach every issue with an open mind?
- Do they avoid doing or saying anything that causes people to believe there was preferential treatment in favour of one party or another?

**Dignity and Respect:**

- Do decision makers, Councillors and persons in positions of authority treat everyone with dignity and respect?
- Do members treat decision makers, Councillors and persons in authority with dignity and respect?

**Professional Conduct:**

- Is unprofessional or inappropriate conduct allowed to occur?
- Is the use of profane language tolerated?
- Are policies in place to ensure that there are consequences for unprofessional or inappropriate conduct or the use of profane language?

**Duty to Disclose:**

- As a decision maker, Councillor or person in a position of authority, if a situation occurs that could affect your ability to be neutral or could harm the reputation of your position, do you report the matter to the people involved?

**Bias:**

- As a decision maker, Councillor or person in a position of authority, do you avoid activities that could create an actual or perceived appearance of preferential treatment?

**Misuse of Position:**

- If you are a decision maker, Councillor, or person in a position of authority, do you make sure you never misuse or abuse your position?

**Right to Complain:**

- Are you aware that everyone has the right to complain without fear of punishment or negative consequences?
- Are you also aware that punishment or allowing negative consequences to occur to someone that has made a complaint is a serious breach of administrative fairness?

## Information and Communication

**Public Information:**
- Is public information available in a format that is understandable and written in plain language?
- Is public information also available on audiocassette, Braille, Cree or other formats if necessary?

**Clarification:**
- Are adequate explanations provided for people asking for information about such things as the roles and responsibilities of Council, Council members, staff and workers?
- Are adequate explanations given to people asking for details about activities on the Settlement, personal entitlements, eligibility criteria, other options, etc.?

**Forms:**
- Are all forms that require completion written in plain, clear language?
- Are all forms that require completion easy-to-read and understand?

**Freedom of Information:**
- Are individuals promptly provided with forms and statements they have signed?

**Letters and Correspondence:**
- Are all letters and correspondence written in clear plain language and made available in formats suitable for people who have difficulty reading or who are blind?

## Customer Service at Settlement Buildings and Offices

**Telephone and Faxes:**
- Are ringing telephones answered quickly?
- Do telephones ever go unanswered?
- Are callers able to leave a voice mail message?
- Are telephone messages and faxes replied to in a timely manner?
- Is there a publicized fax number?

**Access to Public Buildings:**
- Is there enough parking available for the public?
- Is there convenient handicapped parking?
- Is there convenient public access?
- Are Settlement buildings, offices and washrooms wheelchair accessible?
- Are there play areas for children?
- Are Settlement offices and buildings child-friendly?

**Facilities:**
- Are places of work on the Settlement safe and healthy for staff?
- Are Settlement buildings and offices designed to respect and protect the privacy of Settlement members and staff?

## Decisions and Procedures

**Opportunity to be Heard and to Respond:**
- Are parties given a chance to present information and evidence in support of their position?

**Timeliness:**
- Are decisions made and actions taken within a reasonable time period?

**Reasons for Decisions:**
- Are adequate reasons for decisions and actions communicated or provided to the affected parties in a meaningful way?

**Appeal Review and Complaint Procedure:**
- Are affected individuals informed about ways to appeal, request a review, or complain about decisions made or actions taken?
- Is this information provided in a polite, respectful way?
- Is everyone in the community aware of these rights through highly visible posters and brochures?

**Complaint Procedures:**
- Are complaint procedures well known, clearly defined and understandable?
- Are community suggestions for improving complaint procedures published or made available to Settlement members?
- Are complaints welcome and given careful consideration?

## Organizational Issues at Settlement Offices and Work Sites

**Labels and Roles:**

- Do all job descriptions clearly and simply outline the work performed?
- Do the job titles accurately describe the work done?

**Re-organization:**

- Can jobs be combined, refined or the work re-organized to achieve a higher quality or better delivery of services?

**Coordination:**

- Could service quality and fairness to Settlement members be improved through adjustments in policy and procedures?
- Could relationships with other partners, outside communities and government agencies be made better through adjustments to policy and procedures?
- What procedures are in place to encourage an internal audit or to check that work is being done in the way it was originally planned?
- Is there an attitude in the work place that promotes growth, change and ongoing improvement?

## Agency Review and Planning

**Consultation with Settlement Members:**

- Are affected members invited to take part in the planning of changes to the Settlement?
- Is this consultation done in a meaningful and timely way?
- Does everyone involved know how the final decision will be made at the beginning of his or her involvement?

**Evaluation:**

- Are systems in place that accurately record and organize statistical information so that changes in programs or policies can be evaluated and adjusted if necessary?

## Distribution of Settlement Resources

**Housing:**

- Is the distribution of Settlement housing fair?
- Do members have equal opportunity to receive Settlement housing?
- Are the qualification criteria to receive housing clearly understood and fair?

**Jobs:**

- Are members given an equal opportunity to compete for jobs?
- Are contracts and work distributed fairly amongst Settlement members?

## Conflict of Interest Checklist

### Background

All members of a Métis Settlement Community are entitled to a governance structure that is conducted with fairness, integrity and impartiality of decision making. Public trust is damaged when the private interests of an elected official or an employee takes, or appears to take, priority over the public interest, thus leading to a conflict of interest or an apparent conflict of interest.

### Purpose of the Checklist

This checklist will be used to guide conflict of interest investigations within the Métis Settlements of Alberta. It can inform the person making a complaint and the recipient of a complaint about the criteria to be used in an investigation. It can also serve as a training tool and as information for the Métis community. This checklist is a living document that will change from time to time as the need arises.

### Application

This checklist applies to all elected Councillors and employees of Métis Settlement Councils and their entities (businesses owned in whole or in part by the Settlement).

### Definitions

**"Conflict of Interest"**

- arises when a Council member or an employee is involved in a decision or action during the course of his/her public duties, knowing that there is, or may be, an opportunity to further his/her personal or financial interests or those of an immediate family member or close personal friend.

**"Apparent Conflict of Interest"**

- arises when a reasonable person would think that the individual's judgment is likely to be affected by a private interest.

**"Potential Conflict of Interest"**

- is something that may develop into an actual conflict of interest.

**"Immediate Family"**

- means spouse, father, mother, brother, sister and children.

**"Individual(s), someone, anyone, and everyone"**

- refers to Councillors and employees of Métis Settlement Councils and their entities.

**"Private Interest"**

- refers to an interest that is unique to the individual as opposed to an interest or matter that applies to all or a large group of members of the community. A private interest benefits the individual, an immediate family member or a close personal friend in a disproportionate or preferential way. Private interest is not limited to financial matters. It is when private matters interfere with a Councillor's or an employee's public role that they create a conflict of interest or an apparent conflict of interest.

**CONFLICT OF INTEREST POLICY:**

a) Are there Council policies and guidelines regarding conflict of interest and, if so, are they followed?

b) Are these policies consistent with the *Métis Settlements Act* and any policies developed through the Métis Settlements Council or General Council?

c) Does Council ensure that all managers, employees and business-related entities are made aware of the conflict of interest policy and guidelines?

d) What actions are required of public office holders?

- In all cases, the community member who holds a public office is responsible to take immediate action if he/she suspects that an actual, apparent or potential conflict of interest is possible, whether financial or otherwise.
- Section 39 of the *Métis Settlements Act* requires a Council member to disclose any real or apparent financial conflict of interest to the Council. If the matter before Council is to be decided by a resolution, the Councillor must withdraw from further discussion, voting or involvement unless it is decided by Council that the conflict of interest is insignificant.
- A Council employee is required to immediately disclose a possible conflict of interest to his/her supervisor. The employee may be required to withdraw from any further involvement or action on the matter.

## Examples of Conflict of Interest

While it is not possible to predict all conflict of interest situations, people can use the following headings and questions to help identify where most conflict of interest situations could occur.

### a) Furthering Private Interests

- Does an immediate family member or a close personal friend stand to gain or lose financially from the individual's or the organization's decision or action in a matter?
- Does an immediate family member or a close personal friend stand to gain or lose in some way, other than financially, from the individual's or the organization's decision or action in a matter?
- Is anyone using his/her position to influence a decision, knowing it might benefit an immediate family member or a close personal friend?
- Is anyone using or communicating privileged or confidential information, knowing it might benefit an immediate family member or a close personal friend?
- Is anyone using his/her position to influence a decision or an action, knowing that it may benefit or appear to benefit an immediate family member or a close personal friend?

### b) Nepotism

- Is someone in a managerial or regulatory position over an immediate family member or anyone with whom the relationship between them could bring that individual's fairness into question?
- Is anyone involved in interviews or hiring decisions where applicants are, or include, immediate family members or close personal friends?

### c) Acceptance of Gifts, Gratuities or Other Benefits

- Is anyone accepting favours, gifts, services or hospitality from those who stand to gain or lose from that individual's or the organization's decision or action?
  *Note: This does not prevent acceptance of small gifts of little value or of a cultural nature, or from being honoured in a public manner or publicly being recognized for good work.*

### d) Outside Employment

- Is an immediate family member or a close personal friend gaining or appearing to gain an unfair advantage over other Settlement members in obtaining contracts or other outside employment, due to that individual's public role or access to privileged information?
- Is anyone conducting private business during working hours to the extent that it interferes with his/her public duty?
- Is anyone using public premises, equipment or supplies for private use without appropriate authorization?
- Is anyone using their public role to advance their own private interests in any way?

### e) Public Statements

- Does everyone disclose confidential information only to those who are authorized to receive it? (These actions may also be governed by the *Freedom of Information and Protection of Privacy Act.*)
- Does everyone avoid making public remarks that are not positive and supportive of fellow workers, managers and their public role?

### f) Business or Financial Interests

- Does everyone disclose to the proper authority any business or financial interests of theirs or an immediate family member that may be affected, or may appear to be affected, by a matter under consideration with which they become involved in the course of their public duties?

### g) Volunteer Activities

- Do volunteer activities take up an undue amount of time during working hours?

- Does everyone avoid making any volunteer activities look like official or Council business? Is payment wrongfully accepted for any volunteer activities?
  *Note: Individuals are encouraged to participate in volunteer activities unless this causes an actual or apparent conflict of interest.*

### h) Political Activities

- Are individuals prepared to take a leave of absence from their Settlement position if campaigning for a federal or provincial office? If successful, are they prepared to resign from their Settlement position?
- Do individuals observe all conflict of interest guidelines in the course of their political activities?

### i) General Questions to Consider

- What if the positions were reversed? What if the decision maker was applying for a job, a promotion or a contract and the applicant was in the position of the decision maker? Would the process seem fair?
- If the individual participates in this decision or action, would he/she be worried if fellow workers and the public became aware of his/her association or connection?
- Is the individual making the decision confident of his/her ability to act fairly and in the public interest?